



MONTANA

Management View

*An electronic newsletter for the state government manager
from the Labor Relations Bureau*

STATE PERSONNEL DIVISION, DEPARTMENT OF ADMINISTRATION • ISSUE 9 • APRIL 2003

Legislature passes governor's amended pay bill

House Bill 13, the "state employee pay bill," passed the legislature April 26 with two changes in the bill proposed by Governor Martz in January. The final bill raises all state employees' pay 25-cent an hour beginning in January 2005 and increases the state's contribution to each employee's health insurance premium by up to \$94 per month over the next two years. The administration amended the bill in early April to add more money to the benefit plan's dwindling reserves by changing the effective date of the contribution increase from January to July each year. A conference committee added the 25-cents the last day of the session. The pay raise and contribution will be funded through vacancy savings at the rate of 6.5 percent.

The health insurance benefit will cover the full premium cost for employees with no family members on the plan. Despite the increased contribution, rising health care costs will cause additional out-of-pocket premium costs for employees who pay extra to enroll family members. These premium rates will increase in January 2004 and January 2005. While it's too early to estimate those amounts, State Personnel Division staff believe the increases will be partially mitigated by the change in the contribution's effective date and through possible mid-year plan changes.

Highlights

LMTI update	Page 2
Contract review	Page 4
Arbitration roundup:	Page 4
<i>Incompetence v. Discipline</i>	

There was a point during the session when House Bill 13 offered state employees 45-cents per hour raises, or \$936 a year. That proposal failed when the bill that funded the raises, House Bill 360, was indefinitely postponed in the Senate. House Bill 360 would have given long-term state employees a financial incentive to voluntarily leave their

jobs. Somewhere between 900 and 1,200 state employees were expected to take it. House Bill 360 also required that four hundred vacated jobs be eliminated, leaving the decision on where to cut with the budget director.

LMTI Update

The Labor-Management Training Initiative (LMTI) is a project between the State of Montana, the Montana Public Employees Association, and MEA-MFT to support effective labor relations through specialized training and skill development.

Law enforcement and protective services conference May 19-10

Law enforcement and correctional employees will have an opportunity to learn about labor relations issues unique to their work environment at a May 19-20 conference in Helena. The training is for: highway patrol and criminal investigation staff in the Department of Justice; game wardens in the Department Fish, Wildlife and Parks; correctional and probation and parole officers in the Department of Corrections. The conference is funded by the Labor-Management Training Initiative. There is no registration fee, but attendance is limited to 60 people. Interested employees should contact their personnel officer or their union representative. Labor Relations Bureau staff are working with personnel officers and union representatives to coordinate the attendance list.

The event is at the Colonial Hotel in Helena. The *tentative* agenda looks like this:

May 19 (1 p.m. to 4 p.m.)

Labor relations in a protective service or law enforcement environment.

Andrew Hall, mediator with the Federal Mediation and Conciliation Service, will give ideas and lead a discussion on problem-solving and labor-management cooperation. The subjects include grievance handling and negotiations, with particular emphasis on public safety occupations. Before assuming his current job as a neutral mediator, Mr. Hall worked as a police officer in Seattle, as a private attorney, and as a labor advocate for police and patrol associations in western Washington.

May 20 (8:30 a.m. to 3:30 p.m.)

Why things go right - Why things go wrong.

Gordon Graham, a 30-year veteran of California law enforcement, will provide a morning presentation on organizational risk management - "*Why things go right - Why things go wrong.*" Mr. Graham is a presenter for law enforcement and corrections personnel throughout the United States. His presentation will include ideas for good communication, good decisions, and problem prevention.

Discipline and due process (Weingarten and Garrity).

A panel of management and union representatives will examine due process and discipline issues. Subjects in this afternoon session will include Weingarten and Garrity rights. What approaches work well in disciplinary investigations? What approaches don't work well?

State managers and job stewards learn fundamentals of contract administration
Another Helena workshop added to schedule

About 150 state supervisors and employees attended workshops over the last few months to learn the basics of contract administration, grievance handling, and just cause discipline. The workshops are sponsored by the LMTI and led by trainers from the Federal Mediation and Conciliation Service. By popular demand, we've scheduled a third workshop in Helena for July 30-31.

The Contract Administration & Grievance Handling workshop helps supervisors and job stewards interpret and administer the contract and resolve workplace disputes at their earliest stages. Participants also learn the processes and perspectives used by arbitrators to resolve contractual disputes.

Future dates and locations - There's still openings in these workshops:

April 29-30	Billings	The Sheraton
May 13-14	Missoula	Doubletree Edgewater
June 10-11	Great Falls	University of Great Falls
July 30-31	Helena	Red Lion Colonial Inn

Registration - Interested supervisors, job stewards, and others involved in contract administration may register through their agency human resource office or their union representatives. Registration for most workshops is limited to 60 participants per session.

Costs - The cost of registration, training, material, lunches and snacks will be paid through the Labor-Management Training Initiative.

Ready for contract negotiations?

The majority of collective bargaining agreements in state government will be open for negotiations this spring and summer. Unions have notified the Labor Relations Bureau of their intent to open most contracts for bargaining over contract language or economic items. Management, too, has a right to seek gains (improved contract language) at the bargaining table. Your representative in the Labor Relations Bureau will be working with your agency personnel officer to prepare management's bargaining proposals. If you know of contract provisions that are unusually problematic from a management perspective, and if you have ideas for alternative language, please contact your personnel officer or representative in the Labor Relations Bureau (Paula @3819; Kevin @3789; or Butch @ 3885). Your labor relations representative can verify whether the union has issued notice of intent to re-open the contract.

Arbitration roundup

Each arbitration case involves specific bargaining histories, contract language and facts that could be unique to the agency involved. Contact your labor negotiator in the Labor Relations Bureau if you have questions about how similar circumstances might apply to language in your agency's collective bargaining agreement.

Incompetence an issue of performance, not discipline

Severe misconduct and gross incompetence have one thing in common. They both constitute "just cause" for discharge, however, they can take markedly different paths getting there. In cases of employee misconduct, most managers are familiar with the concept of progressive discipline to correct and prevent inappropriate conduct. But is progressive discipline appropriate for poor work performance when misconduct is not an issue? Probably not. A recent performance-related arbitration illustrates how arbitrators distinguish between matters of incompetent job performance and matters of misconduct or discipline. The state agency prevailed in arbitration by proving that management reasonably tried to help the employee succeed through patient and continuous training and supervision, refraining from a string of disciplinary penalties.

Incompetence, unlike carelessness, generally should not be treated as a disciplinary problem. The "usual" remedies of warnings and suspensions are often viewed as inappropriate and nonproductive when the employee is truly incompetent in the job.

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An employee who simply cannot perform the essential functions of the job would not likely improve from a series of disciplinary reprimands and unpaid suspensions.

The Department of Labor and Industry discharged a clerical employee for failing to learn new computer software procedures associated with her division's conversion from paper to electronic record keeping. The grievant was a three-year employee in a grade 7 administrative support position. Her performance problems surfaced during the project to overhaul a major records system from paper to electronic format.

The department provided the grievant and her co-workers with training and direct supervision to learn the new computer procedures. The grievant's co-workers learned the procedures within two or three weeks of training. The grievant, however, never grasped the procedures adequately. She was slow in opening and processing documents. Her work contained many errors. Management continuously trained and supervised her on the correct procedures, long after her co-workers had learned them.

About three months after the conversion to the electronic record system, the grade 7 position held by the grievant and her co-workers was reclassified to grade 8 because of the new computer tasks. Management decided to place the grievant in a reclassification training assignment as prescribed by the state pay plan rules because she could not satisfactorily perform all the job requirements. The agency and employee agreed in the training assignment she had six months in which to improve and perform satisfactorily in the specified performance areas. If she successfully completed the training assignment, she would get the upgrade to grade 8. If she did not succeed, she would be discharged because the grade 7 job no longer existed. Throughout the six-month training assignment her supervisors provided her continuous training and supervision to help her improve. She failed to improve. After providing sufficient notice to the grievant of her unsatisfactory performance, the department discharged the grievant at the end of the training assignment.

The Montana Public Employees Association grieved the discharge to arbitration. The union argued the training and supervision were inadequate. The union also argued the grievant was entitled to progressive discipline.

Arbitrator Donald Prayzich disagreed with the union and upheld the discharge. *"The Union stresses that the grievant was summarily discharged, without prior progressive discipline to which she was entitled,"* Prayzich ruled March 26, 2003. *"It is generally held that arbitrators are more likely to sustain discharge were progressive discipline has been imposed before discharge. However, incompetence is generally an area of exception, in that progressive discipline is for the most part, not effective in 'changing behavior' where an employee is unable to do the work. This arbitrator has carefully weighed the evidence and arguments submitted in this matter, and while it is unfortunate that the grievant was unable to satisfactorily complete the required training and perform to standard, the weight of the evidence is persuasive that the employer has carried its burden of proving just cause."*

Questions, comments or suggestions? Contact the Labor Relations Bureau or visit our website: www.discoveringmontana.com/doa/spd/css

Paula Stoll, Chief	444-3819	pstoll@state.mt.us
Kevin McRae	444-3789	kmcrae@state.mt.us
Butch Plowman	444-3885	bplowman@state.mt.us